

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
COURT FILE NO.:**

Timothy Braun,

Plaintiff,

vs.

Zwicker & Associates, P.C., a foreign
professional corporation,

Defendant.

COMPLAINT

JURY TRIAL DEMANDED

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d).
2. This action arises out of the Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter "FDCPA").
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

4. Plaintiff Timothy Braun (hereinafter "Braun" or "Plaintiff") is a natural person residing in the County of Hennepin, State of Minnesota, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).
5. Defendant Zwicker & Associates, P.C. (hereafter "Zwicker" or "Defendant"), upon information and belief, is a foreign professional corporation that operates as a debt collection agency from an address of 80 Minuteman Road, Andover, Massachusetts 01810-1031. Zwicker is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

6. Plaintiff allegedly incurred a financial obligation with an Chase Bank USA, N.A., which is a creditor as that term is defined by 15 U.S.C. § 1692a(4).
7. The alleged obligation was primarily for personal, family or household purposes, which is an alleged “debt” as that term is defined by 15 U.S.C § 1692a(5), namely a consumer debt.
9. Sometime on or about November 2008, the alleged debt was consigned, placed or otherwise transferred to Defendant for the purpose of collecting the debt from Plaintiff.
10. Sometime on or about November 7, 2008, Defendant communicated directly with Plaintiff by U.S. mail in an attempt collect a debt. *See* Exhibit 1.
11. That letter, dated November 7, 2008, was the first written notice that Plaintiff received from Defendant in connection with this debt.
12. On or about November 15, 2008, Plaintiff’s attorney wrote directly to Defendant to dispute this debt, request verification thereof, and to notify Defendant that Plaintiff was represented by an attorney. *See* Exhibit 2.
13. That letter, dated November 15, 2008, was received by Defendant on November 29, 2008. *See* Exhibit 3.
14. On or about January 14, 2009, “Bridget Macintire,” who was employed at all times relevant herein, contacted Plaintiff’s attorney by telephone. *See* Exhibit 4.
15. On or about March 16, 2009, Defendant, without first verifying this debt, communicated directly with Plaintiff by U.S. mail in an attempt to collect this debt. *See* Exhibit 5.
16. On or about March 30, 2009, Defendant again communicated directly with Plaintiff by U.S. mail in an attempt to collect this debt. *See* Exhibit 6.

17. Defendant violated 15 U.S.C. § 1692c(a)(2) because Defendant contacted Plaintiff directly when it had actual knowledge that Plaintiff was represented by an attorney.
18. Defendant violated 15 U.S.C. § 1692g(b) because Defendant did not verify this debt or cease collection efforts after it received a dispute letter from Plaintiff's attorney.
19. As a result of said violations, Plaintiff has suffered actual damages in the form of humiliation, anger, anxiety, emotional distress, fear, frustration, and embarrassment, amongst other negative emotions.
20. As a result of said violations, Plaintiff has incurred out-of-pocket expenses, and therefore Plaintiff is entitled to actual damages.

TRIAL BY JURY

21. Plaintiff is entitled to and hereby demands a trial by jury. US Const. Amend. 7. Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I.

**VIOLATIONS OF THE
FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. § 1692 ET SEQ.**

22. Plaintiff incorporates by reference each and every above stated allegation as though fully stated herein.
23. The foregoing acts of the Defendant constitute distinct violations of the FDCPA against the Plaintiff herein, including but not limited to each and every one of the above cited provisions of the FDCPA, 15 U.S.C § 1692 et. seq.
24. As a result of said violations, Plaintiff has suffered actual damages in the form of humiliation, anger, anxiety, emotional distress, fear, frustration, and embarrassment,

amongst other negative emotions, and therefore Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1) of the FDCPA.

25. As a result of said violations, Plaintiff has incurred out-of-pocket expenses, and therefore Plaintiff is entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1) of the FDCPA.
26. As a result of said violations, Plaintiff is entitled to statutory damages of \$1,000.00 from each Defendant, and for Plaintiff's attorney fees and costs pursuant to 15 U.S.C. § 1692k(a)(2)(A) and 15 U.S.C. § 1692k(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter the following judgment, in Plaintiff's favor:

COUNT I: FDCPA VIOLATIONS

- For declaratory and injunctive relief;
 - For an award of statutory damages of \$1,000.00 for the Plaintiff herein, for violations of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A), against Defendant;
 - For an award of costs and reasonable attorneys' fees under the FDCPA pursuant to 15 U.S.C. § 1692k(a)(3), against Defendant, for Plaintiff herein;
 - For an award of actual damages, costs and reasonable attorney fees pursuant to 15 U.S.C. §1692k(a)(1) against Defendant herein in an amount to be determined at trial;
- and

SUCH OTHER RELIEF

- For such other and further relief as may be just and proper.

Dated: March 13, 2010.

MARSO AND MICHELSON, P.A.

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